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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re SELENA G., a Person Coming Under the
Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Respondent,

v.

STEPHANIE M.,

Defendant and Appellant.

F071052

(Super. Ct. No. 517042)

OPINION

THE COURT*

APPEAL from orders of the Superior Court of Stanislaus County. Ann Q.
Ameral, Judge.

Shaylah Padgett-Weibel, under appointment by the Court of Appeal, for
Defendant and Appellant.

John P. Doering, County Counsel, and Carrie M. Stephens, Deputy County
Counsel for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Kane, J. and Smith, J.

Stephanie M. (mother) appealed from the juvenile court's order terminating her reunification services at a contested six-month review hearing (Welf. & Inst. Code, § 366.21, subd. (e))¹ as to her one-year-old daughter Selena G. Stephanie contends the juvenile court erred in providing her fewer than the six months of reunification services afforded her under section 361.5, subdivision (a). We affirm.

PROCEDURAL AND FACTUAL SUMMARY

Stephanie is the mother of twins, Alexa and Vincent (hereafter "the twins"), and Selena, the subject of this appeal. Agustin is the children's father. In January 2014, the juvenile court adjudged the twins its dependents after finding that then 18-month-old Alexa sustained unexplained injuries while in Stephanie's care. The juvenile court ordered Stephanie and Agustin to participate in reunification services. In May 2014, while doing so, Stephanie gave birth to Selena. The juvenile court adjudged Selena a dependent child and ordered a plan of reunification. Though the twins are not subjects of this appeal, the facts and circumstances of their case directly bear on the juvenile court's rulings in Selena's case. Consequently, we incorporate those facts into this case as relevant.

In November 2013, the Stanislaus County Community Services Agency (agency) was contacted after the police responded to a report of an unconscious child. Then 16-month-old Alexa appeared to have sustained a head trauma and to be having a seizure. She also had a facial burn. Stephanie told investigators that she left the twins in the bathtub briefly and, while she was gone, Vincent turned on the hot water and burned Alexa. Stephanie also reported that she left the children in their walkers while she went to the bathroom. She heard a loud noise and found Alexa on the ground and her walker tipped over.

¹ All statutory references are to the Welfare and Institutions Code unless otherwise specified.

Agustin told an emergency response social worker that he and Stephanie engaged in ongoing domestic violence and that he left the residence that morning after they argued. He said Stephanie was particularly mean to Alexa. She cursed at Alexa and threw her into the crib for extended periods of time when the twins were crying. He noticed Alexa had unexplained injuries such as a missing tooth and marks on her head. He said Stephanie had untreated mental health problems. Agustin appeared to be under the influence of drugs and was asked to drug test but he refused.

Stephanie told the social worker that Agustin came and went as he pleased and did not help with the children. She said she suffered from depression and anxiety but was not taking medication because she was pregnant. She admitted yelling at Alexa and telling her to “shut the fuck up” but denied burning Alexa. She also denied using drugs but spot tested for the social worker and tested positive for methamphetamine.

Alexa was transported to the hospital and treated for facial burns and head trauma. The medical staff did not believe her injuries were consistent with Stephanie’s explanation. Stephanie was arrested and convicted of felony child cruelty and sentenced to 180 days in jail and four years of probation.

In January 2014, the juvenile court ordered Stephanie and Agustin to participate in domestic violence, parenting, mental health and substance abuse services.

In May 2014, Stephanie gave birth to Selena while residing at a clean and sober living facility. She had completed inpatient substance abuse treatment and was receiving treatment for depression. She had also admitted intentionally burning Alexa’s face with hot water by holding the shower nozzle against her skin and causing her head injury by throwing her into her crib. Stephanie said she injured Alexa out of anger and frustration.

The agency took Selena into protective custody and placed her in foster care with the twins.

The juvenile court ordered Selena detained and, on July 1, 2014, adjudged her a dependent child at the jurisdictional hearing.

On September 17, 2014, the juvenile court concluded a contested dispositional hearing as to Selena, ordered Stephanie and Agustin to participate in reunification services, and ordered Stephanie to undergo a psychological evaluation. The court scheduled the six-month review hearing on December 19, 2014, and explained why it selected that date, stating:

“[Jurisdiction] was on July 1st, and so that’s why I really thought we needed to be within six months of the date of [jurisdiction].”

The court inquired if anyone disagreed with that date, and Stephanie’s attorney responded, “No.” At that same hearing, the court conducted a six-month review of reunification services as to the twins, ordered them terminated and set a section 366.26 hearing.

In its report for the six-month review hearing, the agency recommended the juvenile court terminate Stephanie and Agustin’s reunification services. The agency opined that Stephanie continued to “exhibit anger reflective of an abuser,” and that Agustin was in denial about the severity of Alexa’s abuse.

The six-month review hearing was continued and conducted in January 2015. Dr. Trompetter, a clinical psychologist, testified he evaluated Stephanie and found no evidence of a severe mental illness. However, he concluded she had maladaptive characteristics such as low frustration tolerance and a propensity for anger. He said these maladaptive characteristics were enduring and not easily resolved. They did not respond to medication and required a considerable amount of work to overcome. He characterized Stephanie’s prognosis for completing her reunification plan as “very guarded.”

Amy Brisky, Stephanie’s therapist and parenting counselor, testified she was concerned about Stephanie caring for Selena because Stephanie was impulsive and could not control her anger. In addition, Stephanie changed her account of how Alexa was

injured during the course of her sessions with Brisky in an attempt to cast herself in a more favorable light.

Judi Schardijn, Stephanie's domestic violence instructor, testified that Stephanie completed 24 of the 52 classes to complete the program. She had rated Stephanie's risk of violence as "moderate." She said Stephanie took responsibility for hurting Alexa to the extent that she admitted the bath water was too hot. However, Stephanie had not discussed the details of Alexa's injury or taken responsibility for intentionally hurting her.

Following testimony, the juvenile court heard argument. Stephanie's attorney argued that the hearing was being held too early and should have been conducted on or after March 17, 2015. The court questioned why the attorney had not raised the issue earlier and asked him to proceed with his argument.

At the conclusion of the hearing, the juvenile court issued its rulings, explaining its reasoning as to each parent. In assessing the parents' efforts, the court found that Stephanie made fair progress but that Agustin made good progress. In particular, the court believed Agustin met a milestone by acknowledging that Stephanie intentionally abused Alexa but advised him to sever any relationship with Stephanie so as not to jeopardize his ability to reunify with Selena. At that point, Stephanie blurted out the following and left the courtroom:

"Bitch. Discredit my fucking shit when I was the one that did all this fucking shit. Fuck that, you stupid cunt."

The juvenile court took a recess and upon returning, found the agency provided Stephanie reasonable services and ordered them terminated. The court continued reunification services for Agustin after finding there was a substantial probability Selena could be returned to his custody. The court continued the section 366.26 hearing as to the twins.

Stephanie appealed.

DISCUSSION

The duration and review of reunification services are set by statute. When, as here, the child was under the age of three on the date of the initial removal from parental custody, section 361.5, subdivision (a) requires the juvenile court to provide the parent reunification services for a period of six months from the date of the dispositional hearing. (§ 361.5, subd. (a)(1)(B).) Section 366.21, subdivision (e) governs the proceedings at the six-month review of services and the juvenile court's options, including terminating reunification services and setting a section 366.26 hearing.

It is undisputed that the juvenile court scheduled the six-month review hearing early. The dispositional hearing was conducted on September 17, 2014, making March 17, 2015, the date marking six months from the dispositional hearing. By conducting the six-month review hearing on January 22, 2015, the juvenile court misapplied section 361.5, subdivision (a)(1)(B).

Real party in interest argues that Stephanie forfeited the right to challenge the early setting of the six-month review hearing by failing to object to the hearing date when the court selected it or any time thereafter. We disagree. "Forfeiture" occurs when a party loses a right by failing to timely assert it. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) The right at issue here is the statutory right to six months of reunification services, not the right to have the hearing conducted on any particular date. Further, the right to services was not infringed until the juvenile court terminated Stephanie's reunification services two months early in January 2015.

We conclude the juvenile court erred in terminating Stephanie's reunification services after only four months and that she can assert her claim of error on this appeal. We also conclude the error was harmless.

Stephanie contends we should not consider the juvenile court's error harmless but rather find that it was structural error and therefore reversible per se. The distinction is found in what are called "trial errors" and "structural errors." Trial errors occur during

the presentation of the case. Such errors can be assessed in the context of other evidence presented in order to determine whether the error was harmless beyond a reasonable doubt. Structural errors, in contrast, occur when a basic protection on which the reliability of the proceedings depends is violated. Structural errors require reversal. (*Judith P. v. Superior Court* (2002) 102 Cal.App.4th 535, 555.)

The juvenile court's early termination of Stephanie's reunification services was clearly not structural error. Stephanie was represented by counsel at the six-month review hearing and had an opportunity to present evidence that she made progress on her case plan and argue for continuing services. She was thus not deprived of her constitutional rights or due process, situations in which reversible analysis has been applied.

Further, the record permits us to assess the juvenile court's error in the context of the evidence it had before it on January 22, 2015, in deciding to terminate reunification services and compare it to what the court would have had before it had the court conducted the section 366.21, subdivision (e) hearing on or after March 17, 2015. As we explain, in our view, the juvenile court would have properly terminated reunification services even if the six-month review hearing had been conducted on the proper date.

In order to terminate reunification services at the six-month review hearing and set a section 366.26 hearing in the case of a child who was under the age of three on the date of the initial removal, the juvenile court must find by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan. If, however, the court finds there is a substantial probability that the child may be returned to parental custody within six months or that reasonable services were not provided, the court must continue the case to the 12-month review hearing. (§ 366.21, subd. (e).)

The evidence before the juvenile court on January 22, 2015, was that Stephanie had deep-rooted and uncontrolled anger which made her physically and verbally abusive.

According to expert opinion, her angry disposition was enduring and her prognosis for improvement very guarded. In addition, she had a full year to explore and improve her behavior in various types of counseling but made no progress as exemplified by her outburst in the courtroom. Under those circumstances, in our opinion, there is no reason to believe that the juvenile court would have found there was a substantial probability Selena could be returned to Stephanie's custody with continued services had the court conducted the six-month review hearing on March 17, 2015.

Further, there is no reason to believe that the juvenile court would have ruled differently with respect to the reasonableness of Stephanie's reunification services. Stephanie contends that it was unreasonable to expect her to complete services in the four months she was provided, especially when some services such as the domestic violence counseling take 52 weeks to complete. As a preliminary matter, Stephanie forfeited the right to challenge the content of her services plan, including the 52-week domestic violence program, by failing to challenge it at the dispositional hearing or on appeal from the court's dispositional ruling. (*In re Julie M.* (1999) 69 Cal.App.4th 41, 47.) Further, there is nothing inherently unreasonable in ordering a service that potentially exceeds the reunification period. The presumption is that the parent will participate and will have shown sufficient progress at the review hearing to warrant continuing services.

We conclude the juvenile court's error in terminating reunification services and conducting the section 366.21, subdivision (e) review hearing prematurely had no effect on the outcome of these proceedings and amounted to harmless error.

DISPOSITION

The judgment is affirmed.